

\* E-filed 1/11/08\*

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MY T. LE,

No. C06-02159 HRL

Plaintiff,

**ORDER ON PETITION FOR  
ATTORNEY'S FEES UNDER THE  
EQUAL ACCESS TO JUSTICE ACT**

v.

MICHAEL J. ASTRUE, Commissioner of  
Social Security,

Re: Docket No. 22

Defendant.

Plaintiff My T. Le challenged the Social Security Administration's denial of benefits. On the parties' cross-motions for summary judgment, this court remanded the matter to the Commissioner<sup>1</sup> for further proceedings. Le now moves for her attorney's fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d)(1)(A). Plaintiff further requests that the fees be made payable to her attorney as the payee. The Commissioner does not dispute Le's entitlement to an award, nor does he object to the reasonableness of the fee request. Rather, the question is whether that award should be paid to plaintiff or to her counsel. This court now deems the matter submitted on the papers without oral argument.

<sup>1</sup> Pursuant to Fed.R.Civ.P. 25(d), Michael J. Astrue is substituted for his predecessor, Jo Anne Barnhart, as the Commissioner of Social Security.

1           The EAJA directs courts to award fees and other expenses to private parties who prevail  
2 in litigation against the United States, unless the government's position was substantially  
3 justified. *See* 28 U.S.C. § 2412(d)(1)(A) ("a court shall award to a prevailing party ... fees and  
4 other expenses ... incurred by that party in any civil action (other than cases sounding in tort),  
5 including proceedings for judicial review of agency action, brought by or against the United  
6 States"). As defined in the EAJA, "party" refers to the individual bringing the claim. 28 U.S.C.  
7 § 2412(d)(2)(B).

8           "The term 'prevailing party,' as found in EAJA and other fee-shifting statutes, is to be  
9 interpreted consistently." *McCarty v. Astrue*, 505 F. Supp.2d 624, 629 (N.D. Cal. 2007) (citing  
10 *McQuiston v. Marsh*, 790 F.2d 798, 800 (9th Cir. 1986)). This court is persuaded that, under  
11 the plain language of the EAJA and statutory interpretation by other courts, the award of  
12 attorney's fees is to be paid to plaintiff as the "prevailing party," and not to her attorney.<sup>2</sup> *See*,  
13 *e.g.*, *Phillips v. Gen. Servs. Admin.*, 924 F.2d 1577, 1582 (Fed. Cir. 1991) ("As the [EAJA]  
14 requires, any fee award is made to the 'prevailing party,' not the attorney."); *McCarty*, 505 F.  
15 Supp.2d at 629 (on a motion to amend an order to make the attorney payee, holding that the  
16 EAJA award of attorney's fees belongs directly to the plaintiff as the "prevailing party").

17           Furthermore, the Supreme Court and the Ninth Circuit have also interpreted other fee-  
18 shifting statutes to mean that an award of attorney's fees are to be paid directly to the  
19 "prevailing party" and not the party's attorney. *See, e.g., Evans v. Jeff D.*, 475 U.S. 717, 731-32  
20 (1986) (concluding that 42 U.S.C. § 1988 bestows fee awards upon the prevailing party, not  
21 attorneys); *Gilbrook v. City of Westminster*, 177 F.3d 839, 875 (9th Cir. 1999) (concluding that  
22 a fee award under 42 U.S.C. § 1988 is to be made directly to the prevailing party, with the  
23 ultimate disposition of the award to be determined by contract between the lawyer and client  
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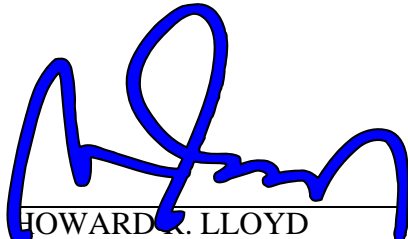
25           <sup>2</sup> This interpretation is consistent with cases addressing dual attorney's fee awards  
26 under the EAJA and the Social Security Act (SSA), 42 U.S.C. § 406(b). *See Gisbrecht v.*  
27 *Barnhart*, 535 U.S. 789, 796 (2002) (holding that fee awards may be made under both  
28 statutes, but the claimant's attorney must refund to the claimant the smaller amount). Under  
the SSA, attorney's fees are paid from the past-due disability benefits. Therefore, the  
purpose of the EAJA award, in this context, has been described as a reimbursement to the  
claimant for any reduction of her past-due benefits by attorney's fee payments under the  
Social Security Act. *See Jankovich v. Bowen*, 868 F.2d 867, 871 (6th Cir. 1989).

1 (citing *Evans*, 475 U.S. at 731-32)). And, unlike *Gilbrook*, there is no indication here of a valid  
2 assignment or that payment properly may be made to plaintiff's counsel as the payee.<sup>3</sup>

3 Based on the foregoing, the award of attorney's fees shall be paid to plaintiff, and not to  
4 her attorney. The Commissioner is ordered to pay \$4451.93 to My T. Le. Since defendant does  
5 not object, the payment may be delivered to the custody of plaintiff's counsel.

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7 **IT IS SO ORDERED.**

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9 Dated: 1/11/08

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11 HOWARD R. LLOYD  
12 UNITED STATES MAGISTRATE JUDGE  
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26 <sup>3</sup> At any rate, defendant cites authority indicating that if the fee award is made  
27 payable to plaintiff's attorney as payee, then this would be an invalid assignment. See 31  
28 U.S.C. § 3727 ("Assignment of Claims Act"); *Bentley v. Glickman*, 234 B.R. 12, 20  
(N.D.N.Y. 1999). Under that act, the assignment would only be valid "after a claim is  
allowed, the amount of the claim is decided, and a warrant for payment of the claim has been  
issued." 31 U.S.C. § 3727(b) (i.e., a valid assignment could be made only *after* an award is  
finally determined).

**5:06-cv-2159 Notice has been electronically mailed to:**

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*Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.*

Date: 1/11/08

/s/ KRO  
Chambers of Judge Howard R. Lloyd